

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-395703-D3  
AND ALL OTHER SEAMAN'S DOCUMENTS  
Issued to: David F. GRANGER

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1840

David F. GRANGER

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 10 September 1970, an Examiner of the United States Coast Guard at New Orleans, La., suspended Appellant's seaman's documents for three months outright plus six months on twelve months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as a fireman/watertender under authority of the document above captioned, Appellant:

- (1) on 17 May 1969, failed to perform duties aboard SS SEATRAN PUERTO RICO at Subic Bay, P.I.;
- (2) on 18 May 1969, at the same place, absented himself from the vessel without authority;
- (3) on 18 May 1969, wrongfully failed to join the vessel at the same place;
- (4) on 14 January 1970, wrongfully failed to join SS GOPHER STATE at Hong Kong; and
- (5) on 20 June 1970, wrongfully failed to join SS ROBIN GOODFELLOW at Balboa, C.Z.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of guilty to the charge and each specification.

The Investigating Officer introduced no evidence.

At the end of the hearing, the Examiner rendered a decision in which he concluded that the charge and specifications had been proved by plea. The Examiner then entered an order suspending all documents issued to Appellant for a period of three months plus six

months on twelve months' probation.

The entire decision was served on 11 September 1970. Appeal was timely filed on 17 September 1970. Although Appellant had until 12 November 1970 to perfect his appeal, nothing has been filed in addition to the original notice.

#### FINDINGS OF FACT

On all dates in question Appellant was serving under authority of his document aboard the vessels named in the specifications found proved, and committed the acts or failures to act as alleged in the specifications as found proved.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the matters dealt with in the specifications in this case should have been dealt with at a hearing held on 10 August 1970 and that the order is too severe.

APPEARANCE: Appellant, pro se.

#### OPINION

##### I

On 10 August 1970 Appellant had a hearing at New Orleans, La., and his document was ordered suspended for one month plus three months on twelve months' probation after nine acts of misconduct aboard SS OCEANIC ONDINE. There was no appeal.

When appellant reported to pick up his document at the expiration of his outright suspension he was served with the charges in the instant case. Appellant now complains that since all the acts of misconduct in the instant case took place before 10 August 1970 hearing on those matters should have been had at the same time as the OCEANIC ONDINE case.

Appellant may have an issue which could have been raised at the hearing in the instant case. Had he done so, the Examiner could have explored and sought explanation of the matter. Many possible explanations, which would have shown that there was no prejudice to Appellant, can be envisioned, but there is no need here to speculate. The hearing was the forum in which the matter should have been raised. Such matters will not be considered on appeal, since the Examiner had no opportunity to consider the question, especially in view of Appellant's pleas of guilty to all five offenses herein.

A cautionary note may be entered here. One who reads the specifications as found proved may be led to believe that a person who fails to join a vessel during a period of un-authorized absence is automatically chargeable with two acts of misconduct. Since "failure to join" is predicated on an unauthorized absence from a vessel, this is not necessarily true.

It is of course possible that a person can be twice absent from a vessel without authority on the same day, with the second absence being the predicate for a failure to join specification as a separate offense. It is also apparent that during one period of unauthorized absence culminating in a failure to join, there may have occurred a failure to perform a specified duty or to stand a specified watch, the authorizing separate specifications of "failure to perform" and "failure to join." In the instant case I need not speculate whether there were two separately chargeable offenses because no evidence was presented in view of Appellant's separate pleas of guilty to the two specifications. It is also apparent that even if it were to be found that the unauthorized absence specification alleged only a lesser offense included in the failure to join specification there would be little reason to change the Examiner's order since there would still remain twelve acts of misconduct found proved in two hearings held a month apart resulting only in a total of four months' outright suspension of Appellant's document.

### III

The last sentence above implies that I do not consider the Examiner's order excessive in view of Appellant's total recent record. I point out to Appellant, however, that from the date of service of this decision he is under two probationary orders simultaneously until 10 August 1971 and that if an offense committed during that period is found proved at another hearing he faces immediately a total of nine months' outright suspension, the sum of the two outstanding orders.

### ORDER

The order of the examiner dated at New Orleans, La., on 10 September 1970, is AFFIRMED.

C.R. BENDER  
Admiral, U. S. Coast Guard  
Commandant

Signed at Washington, D.C., this 24th day of May 1971

## INDEX

Appeal

Issue raised first time on

Order of Examiner

Not excessive